

CHAPTER NO. 378

HOUSE BILL NO. 808

By Representatives Odom, Miller

Substituted for: Senate Bill No. 949

By Senator Herron

AN ACT to amend Tennessee Code Annotated, Title 47, relative to the protection of citizens against adverse financial consequences resulting from electronic computing device failures associated with the year 2000 date change.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding thereto Sections 2 through 5 of this act as a new, appropriately designated part.

SECTION 2. This act shall be known and may be cited as the "Year 2000 Citizens' Protection Act".

SECTION 3. The General Assembly hereby finds that society is heavily reliant upon computers, technology, and the rapid electronic transfer and exchange of accurate information and data. The General Assembly further finds that society relies heavily upon computer technology for most aspects of daily living and business including, but not limited to, financial transactions. The General Assembly further finds that the rapid growth of technology has often outpaced the capabilities of the electronic equipment, software, and hardware that our society utilizes for the exchange and transfer of data and other information. The General Assembly finds that recently developed computer technology is the operational basis for much of the current hardware and software, and yet it may not recognize the year 2000 date change. The General Assembly finds that the result may be that in the year 2000, many computer-based systems may fail or cause incorrect data or other information to be processed. This potential world-wide deficiency in computers is often referred to as the "Y2K bug" and may cause significant problems in the transfer and exchange of data and information in the year 2000 and beyond. Accordingly, the General Assembly hereby determines that in order to protect the citizens of the State of Tennessee, it is appropriate to limit their liability against adverse financial ramifications resulting from electronic computing device failures associated with the year 2000 date change.

SECTION 4. For purposes of this act, unless the context otherwise requires,

(1) "electronic computing device" means any computer hardware or software, computer chip, embedded chip, process control equipment, or other information system that (a) is used to capture, store, manipulate, or process data; or (b) controls, monitors, or assists in the operation of physical apparatus that is not primarily used as a computer but that relies on automation or digital technology to function, including but not limited to vehicles, vessels, buildings, structures, facilities, elevators, medical equipment, traffic signals, and factory machinery.

(2) "notice" means actual or constructive notice that a default of an obligated party is attributable in whole or in part to the failure of an electronic computing device. Such notice shall be subject to verification as provided herein.

SECTION 5. (a) Notwithstanding any other provision of law to the contrary, upon notice, no person or entity of this State nor any person who transacts business with the citizens of this State on matters directly or indirectly affecting real or personal property, whether tangible or intangible, mortgages, credit accounts, banking and financial transactions, or property interests in this State shall initiate or cause to be initiated any foreclosure proceeding, default, or other adverse action against any person due to the improper or incorrect transmission of data or other information or resulting from the inability of a financial transaction to occur, as a result, in whole or in part, of a failure of an electronic computing device to accurately compute, recognize, or timely process the year 2000 date change.

(b) Notwithstanding any other provision of law to the contrary, upon notice, no person or entity may initiate or cause to be initiated any adverse or enforcement action, whether based on contract or otherwise, against any person or entity who fails to or who is unable to cause payment, acts, forbearance, or other financial transactions to occur in a timely manner due to the inability of either party to have such necessary data, information, payments, fund transfer, checking, or other such financial transaction to occur as a result, in whole or in part, of the failure of an electronic computing device to compute, recognize, or timely process the year 2000 date change.

(c) The prohibitions set forth in subsections (a) and (b) shall apply but are not limited to the following types of transactions:

- (1) Mortgages;
- (2) Contracts;
- (3) Landlord and tenant relations;
- (4) Consumer credit obligations;
- (5) Utilities; and
- (6) Banking transactions.

(d)(1) No action otherwise prohibited by subsections (a) through (c) shall resume until the latter of (A) sixty (60) days after January 1, 2000, or (B) sixty (60) days after the obligor has been notified of, or is otherwise aware of, a default and such default has not been cured within the sixty (60) day period.

(2) In any action permitted after a default and the obligor's failure to cure, the plaintiff shall be limited either to the actual economic loss which arises from the failure of an electronic computing device or to the liquidated damages provided in a contract between the plaintiff and defendant. In any action based on the failure of an electronic computing device, punitive damages shall be disallowed unless the plaintiff proves that the economic damages suffered resulted from conscious and flagrant disregard, rather than mere negligence on the part of the defendant.

(e) This act shall not affect those transactions upon which a default has occurred prior to any disruption of financial or data transfer operations attributable to the year 2000 date change.

(f) This act shall not dissolve but shall only suspend the enforcement of such obligations.

(g) Upon notice no person shall report to a credit reporting agency for a period of sixty (60) days any negative credit information against any person due in whole or in part to the failure of an electronic computing device to process financial information and other information or the inability of the consumer to transact financial business and make payments due to the failure of an electronic computing device to compute, recognize, or timely process the year 2000 date change, provided the consumer has provided the written verification prescribed in Section (i). After sixty (60) days, negative credit information may be reported if the person on whom such report is made has failed within the sixty (60) days to cure the default which would result in a negative report.

(h)(1) Nothing contained in this part shall prohibit any agency of this state or any state, or any agency of the United States from bringing any regulatory enforcement action against any person or entity, over which such agency may regulate or license, arising from any financial transaction, including those cited in subsection (c) above and any bank, securities, or insurance transaction.

(2) In Title IV-D child support cases, the Department of Human Services shall not take any adverse action for a period not to exceed sixty (60) days from the date a written notification is received from an obligor of child support that the obligor is unable to access the funds necessary to pay the child support obligation because the funds are being held by a third party and cannot be accessed due to the inability of the computer equipment of the third party to recognize a year 2000 date change. Proof of the third party's inability to make the obligor's resources available must be supplied to the department or its contractor within two (2) weeks of the obligor's notification of the department with an estimate when the funds will be available.

(i)(1) Nothing contained in this part shall prohibit any person or entity from issuing billing statements or charges, defaults, or customary notices of late payment prior to receiving notice that failure to perform or make payment is due in whole or in part to the failure of an electronic computing device. Regarding the failure of a person to perform or cause payment, acts, forbearance or other financial transactions to occur in a timely manner, no additional late payment or charges or notices of late payment shall be sent to a person for a period not exceed sixty (60) days once that person has provided a copy of a written verification to substantiate that such failure is a result, in whole or in part, of a failure of an electronic computing device to accurately compute, recognize or timely process the year 2000 date change. Such written verification shall be duly issued by the owner or operator of the computing device and shall indicate the expected time within which the computing device malfunction is to be corrected.

(2) Any person providing fraudulent notice subjects the obligor to all costs incurred by the creditor to collect payment, including attorneys' fees as a result of the false report.

(j) The provisions of this section shall not limit, delay, or postpone any action based on a contract between the parties which specifically warrants the performance of an electronic computing device with regard to its ability to accurately compute, recognize, or timely process the year 2000 date change.

SECTION 6. This act is repealed effective December 31, 2001.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 28, 1999


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 14th day of June 1999


DON SUNDQUIST, GOVERNOR